

RECEIVED

OCT 30 1997

FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

LAW OFFICES

COHN AND MARKS

DOCKET FILE COPY ORIGINAL

JOEL H. LEVY
ROBERT B. JACOBI
ROY R. RUSSO
RONALD A. SIEGEL
LAWRENCE N. COHN
RICHARD A. HELMICK
WAYNE COY, JR.
J. BRIAN DE BOICE
EDWARD N. LEAVY

SUSAN V. SACHS
KEVIN M. GOLDBERG
MICHAEL A. MCVICKER

SUITE 600
1333 NEW HAMPSHIRE AVENUE, N.W.
WASHINGTON, D.C. 20036-1573

TELEPHONE (202) 293-3860
FACSIMILE (202) 293-4827
HOMEPAGE WWW.COHNMARKS.COM

OF COUNSEL
MARCUS COHN
LEONARD H. MARKS
STANLEY S. NEUSTADT
RICHARD M. SCHMIDT, JR.

DIRECT DIAL: (202) 452-4836
INTERNET ADDRESS:

October 30, 1997

VIA HAND DELIVERY

Mr. William F. Caton
Acting Secretary
Federal Communications Commission
1919 M Street, N.W.
Washington, D.C. 20554

RECEIVED
OCT 30 1997
FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

Re: Comments in MM Docket No. 97-182

Dear Mr. Caton

Transmitted herewith, on behalf of Beaverkettle Company, licensee of broadcast stations WHBC(AM) and WHBC-FM, Canton, Ohio, are the original and nine (9) copies of its Comments in the above-captioned matter.

Should you have any questions with respect to this filing, please contact the undersigned.

Very truly yours


Wayne Coy, Jr.

Enclosures

No. of Copies rec'd 219
List ABCDE

RECEIVED

OCT 30 1997

FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

ORIGINAL

DOCKET FILE COPY ORIGINAL
RECEIVED
OCT 30 1997
FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, DC 20554

In the Matter of)
)
Preemption of State and Local Zoning and) MM Docket No. 97-182
Land Use Restrictions on the Siting,)
Placement and Construction of Broadcast)
Station Transmission Facilities)

**COMMENTS OF BEAVERKETTLE COMPANY,
dba WHBC, WHBC-FM RADIO**

I. Introduction

Beaverkettle Company, owner and operator of radio stations WHBC (AM) and WHBC-FM, is the holder of a current construction permit to improve its AM facilities by increasing power from 5 KW to 15 KW, in an effort to deliver a higher quality, interference free service to the communities we serve. In order to implement the construction permit, Beaverkettle needs to erect two additional 330 foot AM towers at its existing transmitter site, which already has three towers. These comments will support the concept of FCC preemption of certain local zoning restrictions in situations such as ours.

Although Beaverkettle seeks only to add two relatively short AM towers to an existing tower site, we have encountered a local zoning obstacle. In our case, the local zoning board is requiring that we pursue a zoning change as well as apply for a Conditional Use Permit, a process which, by their own admission, will take at least six months. In addition, we have been informed that the prescribed process will not guarantee the required permits.

Local zoning boards have found themselves in a situation where they must curtail and control the proliferation of Cellular and Personal Wireless Services towers which now clutter the landscape. It appears that an unintended effect of the 1996 Telecommunications Act is that non-wireless telecommunications facilities such as broadcast are finding it more difficult to obtain zoning approvals, as a result of changes in local zoning regulations, as local authorities try to comply with the act. Although the 1996 Telecommunications Act provides some guidance for zoning in the handling of PWS facilities, no such guidance exists for Broadcast facilities. A local Zoning Inspector shared his frustration and concern over this, and indicated his hope that federal guidelines be forthcoming for all telecommunications towers licensed by the FCC.

Under Ohio law, local zoning authorities could handle broadcast facilities proposals more easily if we were Public Utilities, but we are not. Therefore, guidance and involvement by FCC in these matters is definitely needed.

II. Zoning Delays

Delays caused by zoning problems, when added to the time required to obtain local building permits, result in broadcasters' filing for extensions of their FCC construction permits and cause undue delays in providing or improving broadcast services to the communities they serve. In the case described herein, six months minimum processing time for zoning approval amounts to a third of the valid time for the construction permit.

Beaverkettle believes that the time limits for local government action stated in the Petitioner's proposed preemption rules are reasonable.

III. Categorical Preemption

We also agree that local restrictions based on health effects of RF emissions, interference to other services and consumer electronic devices and tower marking and lighting should be categorically preempted, provided the broadcast facility is in FCC and FAA compliance in these areas. Federal authorities clearly have jurisdiction in these matters.

III. Denials and Declaratory Ruling

We agree that local authorities should be required to demonstrate that any regulation restricting a broadcast licensee's ability to build or modify their transmission facilities is reasonable in the context of clearly defined health or safety objectives. Also, it appears reasonable to us that any local zoning denial be in writing, and that a broadcaster adversely affected by such a denial be able to petition the FCC for a Declaratory Ruling in the matter. We believe that arbitration in these matters is an appropriate role for the FCC.

IV. Scope of Preemption

Any state and local preemption laws should apply to all broadcasters licensed and regulated under Part 73 of the FCC rules. Preemption under this proposed rulemaking should not be limited to the needs of an early rollout of DTV.

It should be emphasized that broadcasters, because of their unique role as providers of a significant free public service to the communities they serve, need to be recognized by state and local authorities as such. A distinction should be drawn between broadcasters and wireless operators. Broadcasters serve the entire community in which they operate. Although personal wireless services provide a need, it cannot be compared

to services provided by broadcasters. Therefore, broadcaster requests to local zoning authorities should be treated somewhat differently than regulations pertaining to telecommunications towers in general. This is particularly true when, as in our case, a broadcaster seeks only to improve facilities at an already existing site.

V. Aesthetics

Beaverkettle Company believes that local zoning does have a place in the siting of broadcast facilities in certain areas. Zoning authorities have a perfect right, even an obligation, to impose reasonable standards on broadcast and telecommunications facilities. These standards would include required property line setbacks, property maintenance and upkeep, fencing requirements and issues of health and safety other than RF emissions, interference standards and tower lighting and marking when these are required by FCC and FAA.

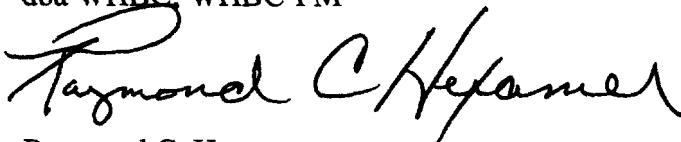
VI. Summary

Generally, we endorse the Petitioner's request for proposed preemption rules. We believe that these rules should cover all Part 73 broadcasters. We do not believe that the rules should in any way be limited to the requirements imposed by DTV implementation.

We believe that the unique position of broadcasters as providers of an important free public service to the communities they serve should be considered in the application of local zoning rules pertaining to telecommunications towers.

Respectfully submitted,

BEAVERKETTLE COMPANY,
dba WHBC, WHBC-FM



Raymond C. Hexamer
President



William C. Glasser
Director of Engineering

October 28, 1997